

# **EXHIBIT 13**

**SEWARD & KISSEL LLP**

ONE BATTERY PARK PLAZA  
NEW YORK, NEW YORK 10004

MARK D. KOTWICK  
PARTNER  
(212) 574-1545  
kotwick@sewkis.com

TELEPHONE: (212) 574-1200  
FACSIMILE: (212) 480-8421  
WWW.SEWKIS.COM

901 K STREET, NW  
WASHINGTON, D.C. 20005  
TELEPHONE: (202) 737-8833  
FACSIMILE: (202) 737-5184

August 25, 2023

**VIA EMAIL**

Roger L. McCleary, Esq.  
Parsons McEntire McCleary PLLC  
One Riverway, Suite 1800  
Houston, Texas 77056  
rmccleary@pmmclaw.com

**U.S. Bank, National Association, et al. v. The Charitable Donor  
Advised Fund, L.P., et al., Case No.1:21-cv-11059 (S.D.N.Y.)**

Dear Roger:

As you know, we represent Plaintiff U.S. Bank National Association, in its capacity as trustee ("U.S. Bank"), in the above-referenced matter and write to follow up on our meet and confer yesterday concerning U.S. Bank's responses and objections to the DAF Defendants' Second Request for Production (the "Second RFPs").

As discussed yesterday, and as detailed in U.S. Bank's responses and objections to the Second RFPs, a significant number of the requests in the Second RFPs are duplicative of prior requests for documents made by the DAF Defendants and co-defendant NexPoint. See DAF Defendants' First Set of Requests for Production to Plaintiff/Counter-Defendant U.S. Bank, dated April 14, 2023 (56 requests); NexPoint's First Request for Production to Each of the Plaintiffs/Counter-Defendants, dated April 4, 2023 (65 requests); and NexPoint's Second Request for Production to Each of the Plaintiffs/Counter-Defendants, dated June 13, 2023 (22 requests). The DAF Defendants appear to acknowledge as much, stating in the opening instruction in the Second RFPs that the "[r]equests are only intended to encompass documents not previously requested ... or produced by [U.S. Bank] ... in this lawsuit." Notably, based on the face of the Second RFPs, there appears to have been no effort made to determine what documents had in fact been previously requested or produced by U.S. Bank, including in response to the 56 requests in the DAF Defendants' prior request for production. U.S. Bank confirmed on June 27, 2023 that it had substantially completed production in response to the first requests for production.

Roger L. McCleary, Esq.

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To be clear, and as we discussed at some length yesterday, when U.S. Bank objects to a request in the Second RFPs that “it is duplicative of other Requests” and “refers the DAF Defendants to non-privileged documents, if any, produced in response to the aforementioned [and specifically identified] duplicative requests [and] will not produce additional documents in response to this Request,” it is stating that it has produced all non-privileged documents responsive to the request in the Second RFPs in response to the prior duplicative requests, and has no additional non-privileged documents responsive to the request.

In addition, U.S. Bank amends its responses and objections to the Second RFPs to state that it has already conducted a reasonable search and produced non-privileged documents, if any, responsive to Requests 10, 15, 16, 30, 31, 36, 37, 38 and 39 in response to prior requests, and that it has no additional non-privileged documents responsive to those requests.

This also confirms that U.S. Bank has not withheld non-privileged, responsive documents on the basis of its general objections in either its responses and objections to the Second RFPs or the prior document requests served by Defendants in this action.

To the extent there are additional non-privileged documents that U.S. Bank has agreed to produce that are responsive to any document requests, if any, it anticipates that it will produce those documents by Wednesday, August 30.

Sincerely,

*/s/ Mark D. Kotwick*

cc: Blair Adams, Esq.  
Misha Boutilier, Esq.  
Jeffery Arnier, Jr., Esq.  
Brendan Carroll, Esq.